

# Calendar No. 982

68TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ No. 913

## GRANTING TO CERTAIN CLAIMANTS THE PREFERENCE RIGHT TO PURCHASE UNAPPROPRIATED PUBLIC LANDS

JANUARY 22 (calendar day, JANUARY 23), 1925.—Ordered to be printed

Mr. STANFIELD, from the Committee on Public Lands and Surveys,  
submitted the following

### REPORT

[To accompany H. R. 8522]

The Committee on Public Lands and Surveys, to whom was referred H. R. 8522, granting to certain claimants the preference right to purchase unappropriated public lands, having considered the same, report it to the Senate with the recommendation that it do pass with the following amendments, to wit:

Page 1, line 10, after the word "That," insert the following:

any owner in good faith of land shown by the official public land surveys to be bounded in whole or in part by such erroneously meandered area, and who acquired title to such land prior to this enactment, or

Page 2, line 14, after the word "claimant," insert the following  
"under the public land laws."

Page 2, after line 14, insert the following new section, to be numbered section 3:

SEC. 3. In event such erroneously meandered land is bounded by two or more tracts of land held in private ownership with apparent riparian rights indicated by the official township plat of survey at date of disposal of title by the United States, the Commissioner of the General Land Office shall have discretionary power to cause such meandered area, when surveyed, to be divided into such tracts or lots as will permit a fair division of such meandered area among the owners of such surrounding or adjacent tracts, under the provisions of this act. In administering the provisions of this act, where there shall exist a conflict of claims falling within its operation, if any claimant shall have placed valuable improvements upon the land involved, or shall have reduced the same to cultivation, then to the extent of such improvements or cultivation, such claimant shall be given preference in adjustment of such conflict: *Provided*, That no preference right of entry under this act shall be recognized for a greater area than one hundred sixty acres in one body to any one applicant, whether an individual, an association, or a corporation.

Renumber sections 3, 4, and 5, as sections 4, 5, and 6.

At the outset it may be well to note that, while the title of the bill does not so indicate, it is one of purely local application, operative only in the State of Wisconsin.

As appears from the language of the bill, it is sought to authorize the Secretary of the Interior to make disposal of public lands which were erroneously meandered as covered by a permanent body of water, when the township in which they lie was surveyed, when it is now ascertained as a fact, that the land should have been surveyed because not actually covered by any permanent body of water.

It is to be noted that under the terms of this bill, any claimant seeking to acquire title must pay to the Government the appraised value fixed by the Government. There is present no element of donation from the Government.

The claimants to whom preference right of purchase is given are those who have become the owners of tracts bounded by the meander lines. As a general rule of law, if the original plat of township were correct, then it would indicate that the owners of such adjacent tracts would take title to the meandered land after that land had ceased to be covered by a permanent body of water, and had become dry land. In other words, land originally omitted from the public land survey, supposedly because under a permanent body of water, and thereafter becoming dry by reason of the gradual drying up of the water, would become the property of the adjacent owners by riparian ownership.

One acquiring such adjacent tracts would properly look to the official township plat, and from such examination would naturally draw the conclusion that, by purchasing the adjoining surveyed land, he would incidentally acquire, by riparian ownership, the title to the unsurveyed, meandered area, should it become dry land. Such incident of ownership of the surveyed land would obviously constitute a valuable appurtenance thereto.

However, it would appear inferentially from the report of the Interior Department upon the bill that occasions present themselves where it is now found as a fact that the meandered, unsurveyed area was really dry land when the township survey was made, and as such should have been included in the township survey, and that the action of the Government surveyor (in past years operating under contract) in omitting the land from the survey, was therefore erroneous.

Such a state of facts would operate to leave the meandered area in the legal status of unsurveyed public lands. Upon a survey being made it would become open to acquisition by the first qualified applicant who might file upon it, whether under the homestead laws or other laws, in most instances wholly without any pecuniary return to the United States.

The theory of this bill is that under such conditions the owners of abutting tracts should be accorded an opportunity, in preference to others, of buying the adjacent meandered area, when surveyed, at a purchase price to be fixed by the Government after appraisal.

If no such owner avails himself of the preference right to purchase within the period fixed by the bill, the land thereafter will be classed as vacant public land, open to acquisition under the general public land laws.

## EXPLANATION OF AMENDMENTS PROPOSED

The first amendment will insert after the introductory word "That," at the beginning of section 2, the following:

any owner in good faith of land shown by the official public land surveys to be bounded in whole or in part by such erroneously meandered area, and who acquired title to such land prior to this enactment, or—

This amendment will operate to confer a preference right of purchase upon an owner of adjacent surveyed land without requiring that such owner shall have already reduced the meandered area to cultivation, or that he shall have placed valuable improvements thereon, as provided by the section as it now reads.

This amendment would merely place upon a plane of equality with others, the owner of adjacent land who refrained from taking physical possession of unsurveyed area, until such time as the question of ownership might be determined, or until such time as he might acquire unquestioned title by direct purchase from the Government.

It will be noted that the element of good faith must be present, and that the preference right of purchase shall not extend to those acquiring title to the adjacent, surveyed lands, after enactment of this bill. This restrictive provision will operate to prevent any speculation in such preference right as an incident to ownership of the surveyed lands.

The second amendment will insert at the end of section 2 of the bill, the words "under the public land laws."

As section 2 stands, it removes from the operation of the bill lands which may be in the legal possession of an adverse claimant. It is possible that a mere squatter might in trespass and in disregard of the title of the United States, acquire such a possessory title as would be good against all but the United States even though he might be disqualified to acquire title under the public land laws.

The addition of the words quoted would make the exception applicable only in favor of one in legal possession "under the public land laws."

The third amendment proposes the insertion of a new section, reading as above indicated.

As is obvious, the exterior lines of meandered areas, in the nature of things, must be irregular, while public survey lines are regular, following the cardinal points of the compass. Further, public land is usually surveyed, so far as may be practicable, into 40-acre tracts.

The first portion of the proposed new section confers upon the Commissioner of the General Land Office discretionary power to so subdivide the meandered area, when surveying it, as to make possible a fair division of the meandered area among the owners of abutting tracts, their acquisition of title, however, to be by purchase at the appraised valuation. It is believed that this discretionary authority should be conferred in order that justice might be the better done among owners of abutting lands. This might be accomplished by subdividing the meandered area by the new survey into tracts containing more or less than 40 acres, and rendering it possible for each of several owners of surrounding lands to benefit by exercising the preference right of purchase under this enactment.

The second provision of the proposed new section confers a preference right, in event of a conflict of claim under the bill, upon a claimant who shall have placed valuable improvements upon the unsurveyed land, or who shall have reduced the same to cultivation, such preference right extending, however, only to the extent of protecting such improvements or cultivated area. Other things being equal, and if it is practicable to extend the benefits of the bill to but one of two conflicting claimants, it would seem fair that the preference be accorded to him who has improved the land.

The third and concluding provision of the new section provides that in no event shall any preference right of purchase under the bill be recognized to an extent of permitting purchase of more than 160 acres. It is believed that in most instances, the area involved would probably be less than this area; but as a measure of precaution, and to prevent any one owner from acquiring any large area hereunder, it is believed to be wise to carry this restriction in area.

The fourth amendment merely provides for the clerical step of renumbering original sections as required by insertion of a new section 3.

The recommendations of the Secretary of the Interior are indicated by the report submitted by him as follows:

DEPARTMENT OF THE INTERIOR,  
*Washington, January 13, 1925.*

Hon. I. L. LENROOT,  
*United States Senate.*

DEAR SENATOR: In accordance with your request, I have considered amendments you propose to offer to H. R. 8522, granting certain preference rights to adjoining owners of certain areas in the State of Wisconsin, and have to advise that, if Congress deems the suggested amendments advisable, this department is aware of no objection to their adoption.

Very truly yours,

HUBERT WORK.

○